

October 5, 2012

BY EMAIL TRANSMISSION

Gina McCarthy
Assistant Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
mccarthy.gina@epa.gov

Re: Issuing Final Nonattainment Designations for the 2010 Revised Primary Sulfur Dioxide National Ambient Air Quality Standards

Dear Assistant Administrator McCarthy:

American Lung Association (ALA), the Environmental Defense Fund (EDF), and the Natural Resources Defense Council (NRDC) are writing to urge EPA to take action as expeditiously as possible to designate nonattainment areas for the revised sulfur dioxide National Ambient Air Quality Standards (NAAQS). As you know, in June of 2010, EPA finalized revisions to the health-based air quality standards for sulfur dioxide (SO₂), updating standards that had been in place since 1971. Sulfur dioxide is a dangerous air pollutant associated with severe respiratory impacts, including decrements in lung function and aggravation of preexisting respiratory conditions.¹ These impacts are especially acute for children and individuals who suffer from asthma.² In setting a new standard, EPA determined that it was necessary to protect against short-term bursts of SO₂, and set a one-hour standard of 75 parts per billion.³ The Agency estimated that this strengthened standard would result in health benefits valued between \$13 billion and \$33 billion.⁴ However, without the designations required by law, the public will continue to suffer from these unhealthful levels of SO₂.

Unfortunately, EPA's subsequent decision to delay implementation of the standard postponed by one year its statutorily required determinations concerning which areas of the country meet or fail to meet the SO₂ standard.⁵ The Agency explicated its approach for relying on air quality modeling and monitoring in carrying out the standard. The Agency also noted that in a number of instances air quality monitoring data was available now that could provide the basis for immediate nonattainment designations.⁶ We urge the Agency to take corrective action as

¹ See Primary National Ambient Air Quality Standard for Sulfur Dioxide Final Rule, 75 Fed. Reg. 35,520, 35,525 (June 22, 2010).

² See *id.*

³ 40 C.F.R. § 50.17(a). On July 20, 2012, in *National Environmental Development Association's Clean Air Project v. EPA*, the D.C. Circuit upheld this standard as firmly grounded in science and dismissed several challenges to the manner in which the agency would implement the standard.

⁴ 75 Fed. Reg. at 53,888.

⁵ 77 Fed. Reg. 46,295 (Aug. 3, 2012).

⁶ *Id.* at 46,297.

expeditiously as possible and issue the nonattainment designations for areas with air quality monitoring. The enclosed table of areas summarizes gubernatorial recommendations for nonattainment designations that are pending before EPA on the basis of air quality monitoring. We also ask the Agency to promptly resolve the questions regarding the role of analytical methodologies such as air quality modeling in implementing the standard. We believe that air quality modeling can and should provide a sound technical basis for air quality designations. Promptly completing these nonattainment designations is foundational to the development of air quality measures that will restore healthy air and reduce public exposure to dangerous levels of SO₂ pollution.

When EPA promulgates a new NAAQS or revises an existing NAAQS, the Clean Air Act provides for input from the states in informing EPA's ultimate determination about which areas of the country either meet or fail to meet the new standard. No later than one year after EPA promulgates a new or revised NAAQS, the states must submit recommended area designations for all areas within their borders, listing each area as attainment, nonattainment, or unclassifiable.⁷ EPA must then promulgate designations for these areas "as expeditiously as practicable, but in no case later than 2 years" after the new NAAQS was promulgated.⁸ In limited circumstances, EPA may postpone this deadline by "up to one year" if the Agency has "insufficient information to promulgate the designations."⁹

The Agency's June 2, 2010 decision to strengthen the SO₂ NAAQS triggered a June 3, 2011 deadline for states to submit their recommended area designations¹⁰ and a June 3, 2012 deadline for EPA to promulgate the initial designations.¹¹ However, in an August 3 Federal Register Notice, EPA extended the deadline by one year, explaining that the Agency had insufficient information to meet the statutory deadline.¹² In making this determination, EPA noted that the "significant uncertainty" in this case largely stems from how EPA will use a combination of monitoring and modeling to designate areas. Under this blanket extension, EPA is now required to promulgate SO₂ area designations by June 3, 2013.¹³

Some states, however, have already recommended nonattainment designations based exclusively on data from monitors indicating unsafe levels of SO₂. For those areas, swift action is necessary to ensure appropriate health protections are in place. Indeed, EPA recognized as much in its deferral notice: "EPA intends to make its best effort to promulgate final designations for areas with monitored violations of the SO₂ NAAQS by the end of calendar year 2012 . . . rather than take until June 2013."¹⁴ There is no significant uncertainty with respect to EPA's duty to designate these areas as nonattainment. Accordingly, and consistent with EPA's own commitment, we respectfully urge the Agency to finalize these nonattainment designations and

⁷ 42 U.S.C. § 7407(d)(1)(A).

⁸ 42 U.S.C. § 7407(d)(1)(B)(i).

⁹ *Id.*

¹⁰ See 42 U.S.C. § 7407(d)(1)(A) (states must submit recommended area designations no later than one year after a new or revised NAAQS is promulgated).

¹¹ See 42 U.S.C. § 7407(d)(1)(B)(i) (EPA must promulgate area designations "no case later than 2 years" after promulgating a new or revised NAAQS).

¹² 77 Fed. Reg. at 46,297 (Aug. 3, 2012).

¹³ *Id.*

¹⁴ *Id.*

ensure that the protections of the Clean Air Act are swiftly implemented in communities in which they are urgently needed to improve air quality and protect public health.

We appreciate the Agency's efforts to strengthen SO₂ health protections throughout the nation and its efforts to carefully implement this standard in areas in which monitoring data does not currently exist. We also respectfully urge the Agency to act expeditiously in addressing the role of air quality modeling in providing the basis for nonattainment designations and, as noted, we believe modeling is a sound analytical methodology that should be deployed in identifying and protecting areas afflicted by unhealthy SO₂ concentrations.

Sincerely,

Peter Zalzal
Shannon Smyth
Environmental Defense Fund
pzalzal@edf.org
ssmyth@edf.org

Janice Nolen
American Lung Association
Janice.Nolen@Lung.org

John Walke
Natural Resources Defense Council
jwalke@nrdc.org

cc: Joseph Goffman
Steve Page
Lydia Wegman